

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-390-E

IN RE: Ganymede Solar, LLC,)	
)	
Petitioner,)	
)	PETITION
Dominion Energy South Carolina,)	(§58-27-980)
Incorporated,)	(AMENDED)
Respondent.)	

INTRODUCTION

Ganymede Solar, LLC (hereinafter as, the “Project”, or “Petitioner”) is a South Carolina limited liability company whose sole business is the development of a solar photovoltaic electric generation facility located Elloree, in Orangeburg County, South Carolina.

The Project is a party to an Interconnection Agreement, (“IA”) as is outlined hereinbelow, with South Carolina Electric & Gas Co. (“SCE&G”), the corporate predecessor to Dominion Energy South Carolina (“DESC”).¹ The IA requires the Project to tender a Milestone payment of \$2,340,100.00 to DESC on December 27, 2019. Because of uncertainty regarding the Variable Integration Charge (“VIC”) that may be assessed on the Project by DESC under the terms of the PPA available to Petitioner, dating back to DESC’s initial request for Commission approval of a VIC (in Docket No. 2019-2-E) in February 2019, the Project has been unable to obtain construction financing in sufficient time to meet the Milestone payment described hereinabove on the Project’s IA.

Specifically, Petitioner requests, pursuant to S.C. Code §58-27-980, (1976, as amended), that this Commission exercise its supervisory authority, granted by the South Carolina General Assembly and described as being, “Full Power and Authority”, and Section 12.1 of the IA, to modify the milestone payment schedule in the IA.

The Project’s Petition, pursuant to this Commission’s Regulation R. 103-825, and other applicable Rules and Regulations was e-filed with this Commission on December 20, 2019. Events occurring after the Project’s filing on December 20, 2019, and the need for clarifying language, require the Petitioner to amend its Petition, pursuant to R. 103-828, and other applicable Rules and Regulations, which Amended Petition follows.

¹ Although SCE&G is the counter-party to the Project’s IA, for ease of reference this Petition will generally refer to DESC instead of SCE&G.

PETITION

Petitioner.

Ganymede Solar, LLC – Interconnection Agreement, entered into May 7, 2018 between SCE&G (n/k/a Dominion Energy South Carolina, Incorporated) and Ganymede Solar. The Facility is a Qualifying Facility as defined by the FERC. The Facility has a nameplate capacity of 75,000 kW AC. The parent Company for the Project is Cypress Creek Renewables, LLC, (“Cypress Creek”). The deadline for the Milestone payment in question is December 27, 2019.

This Commission’s Decision.

This Petition pertains to the effect of this Commission’s Order 2019-847, issued on December 9, 2019, subsequent to and memorializing this Commission’s Directive Order of November 15, 2019, in Docket 2019-184-E.

Background for Petition.

As discussed herein, Cypress Creek is developing a utility-scale solar project in DESC’s service territory in South Carolina. Cypress Creek has invested millions of dollars in the development and interconnection of the Project to date.

The Project is party to an IA with DESC that requires the Project to tender a Milestone payment of \$2,340,100.00 by December 27, 2019. Under its IA, if the Project fails to tender this Milestone payment, the Project will be terminated. To date, the Project has (in total) paid DESC approximately \$2,340,100.00 under the IA.

The PPA available to the Project allows DESC to impose a “Variable Integration Charge” on the Project based on any change in applicable law that occurs after the effective date of the contract. Further, when the IA Contracts were entered into, DESC had neither proposed nor announced any intention to propose a VIC for approval by this Commission. However, in DESC’s 2019 fuel case (Docket 2019-E-2), DESC requested permission from this Commission to impose a VIC on projects with this language in their PPAs, as well as on new projects. *Direct Testimony of John H. Raftery on Behalf of South Carolina Electric & Gas Company*, Docket No. 2019-2-E (Feb. 8, 2019). The VIC proposed by DESC at that time was \$3.96 per megawatt-hour (MWh).

On March 27, 2019, this Commission entered Order 2019-229, bifurcating the proceedings and deferring consideration of the proposed VIC and other issues until later in the year. The Order was premised on the passage of H. 3659 (later to become Act 62) by the South Carolina General Assembly, and also on this Commission's conclusion that:

"The matter of variable integration costs, and their potential impacts and interrelationship with avoided cost rates, is a complex and unique consideration for a fuel proceeding. It has become apparent through the support for bifurcation of this issue . . . that the parties would benefit from additional time to prepare and present their respective cases as to these recently introduced issues." Order No. 2019-229 at 1.

On May 30, 2019, after the passage of Act 62, this Commission opened Docket 2019-184-E to consider DESC's proposals on the VIC, avoided costs, and related issues. DESC again requested approval of a VIC proposal, this time equal to \$4.14 / MWh, in its initial filings in August 2019. On December 9, 2019, this Commission issued Order No. 2019-847, which rejected DESC's proposed VIC but applied an "interim value" of \$2.29 / MWh to the VIC, and ordered the initiation of an integration study in accordance with S.C. Code Ann. § 58-37-60 in Dominion's balancing area. On January 3, 2020, the Commission issued a Directive Order in Docket No. 2019-184-E, amending Order No. 2019-847 and establishing an interim VIC value of \$0.96 / MWh. The interim VIC will be subject to a "true-up" based on the results of the forthcoming integration study.

In Cypress Creek's experience developing solar projects in South Carolina, in order to obtain financing to construct a solar project, the project must have reasonable certainty about the expected revenues from the project. In addition, financing parties also require that there be no circumstances calling into question the Project's ability to deliver on the commitments in the IA or the PPA.

Either of the VIC proposals put forth by DESC (first in February and then in August 2019) would have reduced the Project's projected revenues significantly, and potentially to the point at which some or all of the Project would have been financially non-viable. That revenue reduction, and the sheer uncertainty as to what VIC might ultimately be approved by this Commission (and whether it would be fixed or variable over the term of the PPA), has resulted in Cypress Creek being unable to arrange

financing as yet. Even after this Commission's January 3, 2020, Directive Order, the Project will not know what its ultimate VIC obligation will be until after the Integration Study (which has not yet been scheduled) is completed.

Even though this Commission has now ruled on DESC's VIC proposal, there is insufficient time for Cypress Creek to arrange financing in time to make the next Milestone Payment under the IA. And given the possibility that the Project's IA might be terminated due to that fact, Cypress Creek's financing parties are unable to extend financing to the Project at this time.

In general, DESC has taken the position that it cannot act absent a regulatory Order from this Commission, which is why the Project is seeking relief from this Commission from the effect of this Commission's decision described herein, pursuant to S.C. Code Ann., §58-27-980, (1976, as amended). Unless this Commission modifies the Milestone payment schedule, the Project will be terminated. Accordingly, the Project requests that this Commission modify the Milestone payment schedule (and all related milestones) to allow the Project time to obtain financing and to tender the previously due Milestone payment.

Basis for Petition.

S.C. Code Section 58-27-980

This Commission can grant the relief sought by Petitioner, because this Commission has the following broad statutory authority as to a Utility's Contracts,

"No contract... shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires..."

And,

"...unless [a Contract, in this case, the Company's Interconnection Agreement] be subject to amendment, modification, change or annulment by the Commission..."
S.C. Code Ann. §58-27-980, (1976, as amended).

South Carolina Supreme Court Decisions

- The Public Service Commission of South Carolina is considered the **Expert**, designated by the South Carolina General Assembly to make policy determinations regarding utility rates. Kiawah Property v. Public Service, 597 SE 2nd 145 (2004).
- The Commission sits as the trier of facts, **akin to a jury of experts**, Hamm v. SC Public Service Commission 422 SE 2d 110 (1992).

Relief Sought.

The Project respectfully requests that this Commission exercise its authority to modify the deadline for the Milestone payment of December 27, 2019, and grant other necessary revisions consistent with the Project's request for relief. This Commission's decision will give the Project both the time to arrange for financing of the Milestone payment, and also sufficient certainty that the IA will not be terminated for delay, so that financing can be arranged.

DESC is named as a Respondent, because DESC will be affected by future Orders of this Commission in this matter, but the relief sought is expressly from this Commission and not DESC, because of DESC's general position that absent an Order from this Commission, DESC cannot allow the type of relief sought by the Project.

Reservation of Rights.

The Project expressly reserves all of the Project's rights, previously and as of the date of this filing and going forward, generally its queue positions and specifically, as to Milestones and as to previously tendered Milestone payment(s).

Petitioner is represented by counsel in this proceeding:

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CONCLUSION

Based on this Amended Petition, the Project's Motion of December 20, 2019, and this Commission's supervisory authority outlined in detail hereinabove, this Commission should inquire in this matter and Order the following relief.

WHEREFORE, Petitioner prays for the following relief:

- a. That this Commission amend the IA to delay the Milestone deadline (currently December 27, 2019) until 12 months after the issuance of an Order on this Petition;
- b. That this Commission grant other necessary revisions to the IA consistent with the Project's request for relief, including extension of future IA milestones; and
- c. THAT THIS COMMISSION GRANT SUCH OTHER AND FURTHER RELIEF AS IS JUST AND PROPER.

Respectfully Submitted,
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As Counsel for Ganymede Solar, LLC.

January 24, 2020